

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

October 20, 2011

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Re: ***Sycamore Farms, Inc. v. Barnes Electric, Inc.***
C.A. No. 08C-05-007 RFS

Dear Counsel:

The submissions regarding expert witnesses are incomplete. Neither proponent applies *Daubert*¹ to establish the admissibility of its expert's opinion. Rather, the parties approach the issue cafeteria-style, selecting an item or two and ignoring the rest. My intention in ordering the memoranda was to resolve the issues related to expert witnesses prior to trial.

D.R.E. 702 provides that an expert may testify by "knowledge, skill, experience, training or education" if the testimony is "based upon sufficient facts or data" and is "the

¹509 U.S. 579 (1993).

product of reliable principles and methods reliably to the facts of the case.” Under *Daubert*,² and its progeny,³ when the factual basis, data, principles, methods, or their application in an expert’s opinion are challenged, the trial judge must decide if the expert’s testimony has a reliable basis in the knowledge and experience of the particular discipline.⁴ The proponent bears the burden under *Daubert*.

Plaintiff’s proposed expert is Robert F. Smith, a master electrician licensed in Delaware. He is a principal with First State Inspection Agency. He has inspected hundreds of chicken houses and has testified as an expert witness eight to ten times. Defendant does not challenge Smith’s qualifications but argues that his opinion is based on inaccurate information.

Smith made two site inspections and discussed the situation with Sycamore Farms’ principal, David H. Elliot. Based upon his own observations and Elliot’s input, Smith calculated the impact of the upgrades on the existing electrical system. He stated that the original feeder line to chicken house 4 was adequate and in conformance with the electrical code at the time of installation. However, his opinion is that the additional load imposed by the upgrades exceeded the capacity of the electrical system and created the

²*Id.*

³*Kumho Tire Co., Ltd. v. Carmicheal*, 562 U.S. 137 (1999); *M. G. Bancorporation, Inc. v. Le Beau*, 737 A.2d 513 (Del. 1999).

⁴*Brandt v. Rokeby Realty Co.*, 2005 WL 165362, at *3 (Del. Super.)(citing *M.G. Bancorporation*, at 523)).

potential for damage to the underground feeder lines.

Defendant argues that Elliot's information was inaccurate, rendering Smith's opinion inadmissible. According to Smith, Elliot told him that each chicken house was rewired and eight tunnel fans, six side fans and six box heaters were added to each house.

Elliot thought there might have been eight tunnel fans in each chicken house prior to the upgrade and that Barnes probably added two tunnel fans to each house, but he was not sure. It is clear from the transcript that Elliot's memory at the time of deposition was less than ideal. The conflicts in testimony as to the number of tunnel fans installed in each chicken house may be explored at trial.

Elliot stated that the "tube heaters" were new but did not mention the "side box heaters" referenced by Smith. This too may be clarified at trial. Elliot stated that the side fans were new, but did not testify as to a particular number. Elliot also stated that the "tunnel curtain machines" and the "recirculating systems" were new, but he provided no numbers.

Thus, Smith and Elliot use different terminology for many of the upgrades. The uncertainty about the number of each type of equipment can be explored at trial.

Defendant also observes that Smith did not know the function of either the "vent machine motor" or the "tunnel curtain motors." Defendant does not show why Smith would need to know their function as long as he knew when they kicked in and how much

amperage they used. Moreover, the transcript pages are not provided but a short excerpt is quoted in the memorandum. As always, context can affect meaning, and the Court will not rule on statements presented in a vacuum.

Defendant argues that Smith should not present an opinion on the issue of Barnes' negligence. Plaintiff bears the burden of establishing the relevance, reliability, and admissibility of Smith's expert opinion by a preponderance of the evidence.⁵ The testimony is relevant and, despite Elliot's imprecise memory, the basis of Smith's opinion may be appropriately developed at trial.

On this record, it cannot be determined whether there is a reliable basis for Smith's opinion about the electrical requirements of chicken houses. Nor has it been established that the entire basis of his information was inaccurate. The Court need not address Defendant's contention that Smith will be a better witness for Defendant than for Plaintiff.

Defendant offers the expert testimony of George Landing, a qualified electrical inspector for the State of Maryland. Landing has been conducting chicken house inspections on the eastern seaboard for many years. Plaintiff does not concede that Landing is qualified as an expert.

Landing based his opinions partly on information to him by Bill Brown, who was employed in an unspecified capacity at Perdue at the time of the incident in chicken house

⁵*State v. Vandemark*, 2004 WL 2746157, at *2 (Del. Super.)(citing *Minner v. American Mort. & Guar. Co.*, 791 A.2d 826, 843 (Del. Ch. 2000)).

4. Based on Landing's observations and Brown's input, Landing's opinion is that the electrical load for chicken house number 4 is 101.6 amperes, corrected for a continuous load to 129.50 amps, well below the capacity of the 150 amp breaker. He stated that additional equipment including feed lines, overhead auger motors, vent machine motors raised the amperage to 149.4 amps, still within the 150 amp feeder line.

Plaintiff argues that Landing's opinion, to the extent that it is based on Bill Brown's input, does not qualify Landing as an expert on electrical requirements for a chicken house. While Landing's calculations appear to be his own, Brown's role and his qualifications are unknown. The record will be developed at trial.

Based on the parties' submissions and argument, a final ruling on the reliability of either Smith's or Landing's knowledge in the particular discipline of chicken house electrical requirements is not possible. The parties are expected to provide a complete analysis at trial or face the loss of Smith's or Landing's proposed expert testimony.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary